

Before Mr. Justice L. S. Jackson and Mr. Justice Markby.

KALI MOHAN CHATTERJEE (DEFENDANT) v. KALI KRISHNA ROY
CHOWDRY (PLAINTIFF)*

1869
March 1.

^b
Special Appeal—New ground.

In special appeal, a new ground may be taken, if it manifestly arises out of the facts alleged and admitted, whether pressed or not before the lower Appellate Court.

Baboos *Hem Chandra Banerjee* and *Ambika Charan Banerjee* for appellant.

Baboo *Krishna Sakha Mookerjee* for respondent.

L. S. JACKSON, J.—I think the decision of the Court below is clearly wrong. The defendant held a piece of land from the plaintiff in the midst of lands used for building purposes, in fact, in the centre of a town. On that land the defendant's house was built, and the plaintiffs sued to enhance the rent. Judgment having gone against the defendant in the Court of first instance, he appealed to the Judge, on the ground that the provisions of Act X. would not apply to such a case. We find no trace in the judgment of the lower Appellate Court of any consideration being given to this ground of appeal; but whether it was urged in argument or no, it was one which manifestly arose out of the facts alleged and admitted, and which ought not to have been overlooked by the lower Appellate Court. It seems quite clear that Act X. will not apply to such a case; and whatever may be the effect of our decision on the relations between the parties in respect of those lands, I think we are obliged to say that the suit for enhancement ought to have been dismissed. The decision of the Court below will, therefore, be reversed, and this special appeal allowed with costs.

MARKBY, J.—I am of the same opinion. I think this is an objection which, whether it was pressed or not in the Court below, it is impossible to avoid, because, as it appears to me, the whole proceedings have been misconceived. It is impossible for us to say whether the rules of enhancement laid down in Act X. have been rightly applied, when those rules have no application to the question in this suit. I should always be very unwilling to allow any new ground to be taken in special appeal, but this is one which, it seems, to me, we are ourselves bound to notice.

* Special Appeal, No. 2203 of 1868, from a decree of the Additional Judge of Hooghly, dated the 6th May 1868, affirming a decree of the Deputy Collector of that district, dated the 31st January 1868.

Before Mr. Justice Norman and Mr. Justice E. Jackson.

THE QUEEN *v.* RAMGOBIND CHUCKERBUTTY.

Certificate Tax—Fine—Neglect.

1869
March 2.

The fine imposed under section 17, Act IX. of 1868, for neglect to take out a certificate, must not be less than twice the amount for which such certificate should be taken out.

THE judgment of the Court was delivered by

NORMAN, J.—This was a proceeding under section 17 of Act IX. of 1868, for penalties to which the defendant was alleged to be liable for not taking out a certificate and paying for the same within seven days after the service upon him of a notice by the Collector requiring him to do so.

The Deputy Magistrate of Mymensingh, Mr. Andrew, says, defendant could have told a servant to pay the assessment. He was guilty of a pardonable neglect for not doing so. Accordingly, he ordered him to pay the assessment, Rs. 16, and a fine of one rupee.

The Collector of License Tax brought the matter to the notice of the Magistrate, Mr. Alexander, and eventually an application was made to this Court on behalf of the Government of Bengal, praying that the record might be sent for, under section 404 of the Code of Criminal Procedure, on the ground that the conviction was illegal, inasmuch as the Magistrate had no power to remit any portion of the fine, being bound, under the 17th section, to impose on every offender, on conviction, a fine equal to twice the sum mentioned on such notice. We have sent for the record. We are of opinion that the contention of the Government pleader is correct. We should not have had any hesitation in quashing the conviction, and remitting the case to the Magistrate for a fresh trial, but that Baboo Anukul Chandra Mookerjee, on the part of the Government, states, that the Government does not desire to press the case further as against the party convicted.

Before Mr. Justice Norman and Mr. Justice E. Jackson.

RAMSAHAYA SING AND OTHERS (PLAINTIFFS) *v.* SYUD MUZHAR ALI
AND OTHERS (DEFENDANTS).*

Partition—Regulation XIX. of 1814—Civil Suit.

1869
March 4.

Where a partition of an estate under regulation XIX, of 1814 has been carried out, and confirmed by the Revenue authorities, it seems that one shareholder cannot maintain a suit in the Civil Court to have it declared that he is entitled to a share larger than he claimed in the partition proceedings.

* Special Appeal, No. 1698 of 1868, from a decree of the Principal Sudder Ameen of Bhagulpore, dated the 13th April 1868, reversing a decree of the Moonsiff of Tegra, dated the 27th, of August 1867.